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10 Attorneys for Creditor  
11 Sterling Savings Bank, successor in interest by merger to  
12 Sonoma National Bank

13 UNITED STATES BANKRUPTCY COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15 SAN JOSE DIVISION

16 In Re:

17 BENYAM MULUGETA and PAULA R.  
18 MULUGETA,

19 Debtors.

Case No. 09-51900  
Chapter 11  
R.S. No. RKN/001

Date: May 20, 2009  
Time: 10:00 a.m.

Location: 280 South First St., San Jose, CA  
Courtroom: 3020

20 **STERLING SAVINGS BANK'S REPLY TO DEBTORS' OPPOSITION TO MOTION FOR**  
21 **RELIEF FROM STAY; DECLARATION OF CHRISTY SOMERS IN SUPPORT OF SAME**

22 COMES NOW, Sterling Savings Bank, as successor in interest by merger to Sonoma  
23 National Bank ("Sterling") and, replies to the Debtors' Opposition to Motion for Relief from Stay,  
24 as follows:

25 **REPLY**

26 The Debtors' only substantive objections to this Motion are (1) there is sufficient equity in  
27 the Property and (2) it would not be equitable to grant relief from stay. Both arguments are without  
28 merit.

29 A debtor's equity in real property is the difference between the property value and the **total**  
30 amount of liens against the property. (*Stewart v. Gurley* 745 F.2d 1194, 1195-96 (9<sup>th</sup> Cir. 1984).)  
31 Here, Sterling has established that the Grand Property's value is \$1,960,000 and the total amount of

1 liens against the property is \$3,035,712. Accordingly the Debtors have no equity in the Property.

2 The argument that relief from stay would be inequitable is similarly flawed. These Debtors  
3 have made promise after promise to Sterling and have failed to follow through on any of them.  
4 Specifically, as is set forth in the Declaration of Christy Somers, below, the Debtors have not been  
5 able to make a payment owing to Sterling since June of 2008. On July 7, 2008, when the loan was  
6 30 days delinquent, Sterling sent out a demand for payment. In August of 2008, when the loan was  
7 90 days delinquent, the Debtors represented to Sterling that they were in the process of obtaining  
8 bridge financing to bring their loans current, and asked Sterling to postpone filing its Notice of  
9 Default until September 2, 2008. Sterling obliged. Having received no payment on September 2,  
10 2008, Sterling contacted the Debtors. The Debtors asked for an additional 45-60 days to obtain  
11 financing to bring the loans current. Sterling obliged.

12 Additionally, on September 22, 2008, Sterling offered a "work out" plan to the Debtor,  
13 pursuant to which Sterling agreed to give the Debtors until September 26, 2008 to make the  
14 payments due for June of 2008 and July of 2008, and defer the August and September, 2008  
15 payments to assist the Debtors in bringing the loans current. Mr. Mulugeta accepted this offer and  
16 represented, that he was very close to selling another property (rental property located on Chaucer  
17 Drive, in Berkeley, California [the "Chaucer Property"]) which, combined with the promised bridge  
18 financing, would enable him to bring the loans current. The Debtors failed to make any payment on  
19 September 26, 2008, however, and the Debtors again asked for an extension to October 6, 2008, to  
20 enable them to bring the loans current pursuant to the prior agreement. Sterling obliged.

21 On October 10, 2008, having received no payments from the Debtors (with payments then  
22 owing for June through October of 2008), Mr. Mulugeta represented to Sterling that his wife was  
23 liquidating her 401k account and the escrow on the Chaucer Property was scheduled to close  
24 shortly. Based upon those representations, Sterling agreed to further postpone the filing of its  
25 Notice of Default to give the Debtors a chance to bring the loans current. On October 31, 2008, Mr.  
26 Mulugeta advised Sterling that escrow on the Chaucer Property was scheduled to close in the first  
27 week of November, 2008. Based upon that representation, Sterling granted the Debtors another  
28 extension. On November 7, 2008, however, Mr. Mulugeta contacted Sterling and advised, for the

1 first time, that the sale of the Chaucer Property was actually a "short sale" and that the lender on  
2 that sale would not allow funds from the sales proceeds to be paid to Sterling. Mr. Mulugeta made  
3 no further reference to the 401k liquidation, or to the previously promised bridge financing, and the  
4 Debtors made no further attempts to bring the loans current.

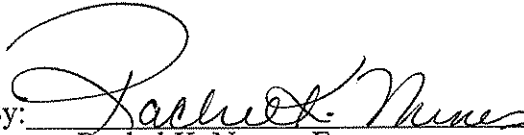
5 On November 12, 2008, after having received dozens of empty promises and seemingly  
6 false representations, and no payments since May of 2008, Sterling recorded its Notice of Default.

7 Thus, notwithstanding the deteriorating market, and notwithstanding the Debtors' repeated  
8 failure to follow through on any representation made, Sterling made numerous accommodations to  
9 the Debtors over a five month period in an attempt to assist the Debtors. The Debtors proved, over  
10 and over again, their inability to perform. The Debtors have made no showing that anything has  
11 changed which will enable them to perform any differently, and the Court should not allow the  
12 Debtors to continue to string Sterling along while its collateral continues to decline in value.

13  
14 Dated: May 19, 2009

Respectfully submitted,

15 ABBEY, WEITZENBERG, WARREN & EMERY

16  
17 By:   
18 Rachel K. Nunes, Esq.  
Attorneys for Sterling Savings Bank

19 -----  
20 **DECLARATION OF CHRISTY SOMERS**

21 I, CHRISTY SOMERS, declare as follows:

22 1. I am a Special Assets Specialist with Sterling Savings Bank (hereinafter  
23 "Sterling"), successor in interest by merger to Sonoma National Bank. I have personal knowledge  
24 of the facts set forth herein and, if called upon as a witness, could and would competently testify  
25 thereto.

26 2. The Debtors, Benyam and Paula Mulugeta, have not made a payment owing to  
27 Sterling since June of 2008.

28 3. On July 7, 2008, when the loans owing by these Debtors were 30 days delinquent,

1 Sterling sent out a demand for payment.

2 4. In August of 2008, when the loans were 90 days delinquent, the Debtors represented  
3 to Sterling that they were in the process of obtaining bridge financing to bring their loans current,  
4 and asked that Sterling postpone filing its Notice of Default until September 2, 2008. Sterling  
5 obliged.

6 5. Having received no payment on September 2, 2008, I contacted the Debtors. The  
7 Debtors asked for an additional 45-60 days to obtain financing to bring the loans current. Sterling  
8 obliged. Additionally, on September 22, 2008, Sterling offered a "work out" plan to the Debtor,  
9 pursuant to which Sterling agreed to give the Debtors until September 26, 2008 to make the  
10 payments due for June of 2008 and July of 2008, and defer the August and September, 2008  
11 payments to assist the Debtors in bringing the loans current. Mr. Mulugeta accepted this offer and  
12 represented, that he was very close to selling another property (rental property located on Chaucer  
13 Drive, in Berkeley, California [the "Chaucer Property"]) which, combined with the promised bridge  
14 financing, would enable him to bring the loans current.

15 6. The Debtors failed to make any payment on September 26, 2008, however, and the  
16 Debtors again asked for an extension to October 6, 2008, to enable them to bring the loans current  
17 pursuant to the prior agreement. Sterling obliged.

18 7. On October 10, 2008, having received no payments from the Debtors (with payments  
19 then owing for June through October of 2008), Mr. Mulugeta represented to Sterling that his wife  
20 was liquidating her 401k account and the escrow on the Chaucer Property was scheduled to close  
21 shortly. Based upon those representations, Sterling agreed to further postpone the filing of its  
22 Notice of Default to give the Debtors a chance to bring the loans current.

23 8. On October 31, 2008, Mr. Mulugeta advised Sterling that escrow on the Chaucer  
24 Property was scheduled to close in the first week of November, 2008. Based upon that  
25 representation, Sterling granted the Debtors another extension.

26 9. On November 7, 2008, Mr. Mulugeta contacted Sterling and advised, for the first  
27 time, that the sale of the Chaucer Property was actually a "short sale" and that the lender on that  
28 sale would not allow funds from the sales proceeds to be paid to Sterling. Mr. Mulugeta made no

1 further reference to the 401k liquidation, or to the previously promised bridge financing, and the  
2 Debtors made no further attempts to bring the loans current.

3 10. On November 12, 2008, Sterling recorded its Notice of Default.

4 I declare under penalty of perjury that the foregoing is true and correct. Executed this 19<sup>th</sup>  
5 day of May, 2009, at Santa Rosa, California.

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7   
8 Christy Somers  
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On May 19, 2009, I served the following document(s):

on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Irvine, California, addressed as follows:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 19, 2009, at Santa Rosa, CA.

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**SERVICE LIST  
BENYAM AND PAULA MULUGETA  
CASE NO. 09-51900**

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**DEBTOR:**

Benyam Mulugeta  
1025 Harker Ave.  
Palo Alto, CA 94301

**JOINT DEBTOR:**

Paula R. Mulugeta  
1025 Harker Ave.  
Palo Alto, CA 94301

**REPRESENTED BY:**

Scott L. Goodsell  
Campeau, Goodsell Smith  
440 N. 1<sup>st</sup> St., #100  
San Jose, CA 95112

**U.S. TRUSTEE:**

Office of the U.S. Trustee / SJ  
U.S. Federal Bldg.  
280 S. 1<sup>st</sup> St., #268  
San Jose, CA 95113-3004

**CREDITORS:**

**Aglaia Panos**  
13240 Clairepointe Way  
Oakland, CA 94619

**California Mortgage**  
62 First St., 4th Fl  
San Fco, CA 94105

**Capital One Bank (USA), N.A.**  
C/O Tsys Debt Management (Tdm)  
PO BOX 5155  
NORCROSS, GA 30091

**Chase**  
PO Box 94014  
Palatine, IL 60094

**Chrysler Financial**  
PO Box 9001921  
Louisville, KY 40290



1       **Chrysler Financial Services Americas LLC**

2       Randall P. Mroczynski  
3       535 Anton Boulevard, 10th Floor  
4       Costa Mesa, AZ 92626

5       **Citi**

6       PO Box 6415  
7       The Lakes, NV 88901

8       **Countrywide Home Loans**

9       PO Box 5170  
10      Simi Valley, CA 93062

11      **Cupertino Dental**

12      10383 Torre Ave. #I  
13      Cupertino, CA 95014

14      **EMC**

15      PO Box 660753  
16      Dallas, TX 75266

17      **Expo**

18      PO Box 6028  
19      The Lakes, NV 88901

20      **Franchise Tax Board**

21      Bankruptcy Section MS A340  
22      PO Box 2952  
23      Sacramento, CA 95812-2952

24      **Internal Revenue Service**

25      P O Box 21126  
26      Philadelphia, P A 19114

27      **Loan Oak Fund**

28      11611 San Vicente Blvd. #640  
29      Los Angeles, CA 90049

30      **Robert Taylor**

31      541B Cowper  
32      Palo Alto, CA 94301

33      **Sequoia Mortgage**

34      1114 Irwin St.  
35      San Rafael, CA 94901



1       **Sonoma Bank**

2       PO Box 6089  
3       Santa Rosa, CA 95406

4       **Tomoko Nakama**

5       1569 Jackson St.  
6       Oakland, CA 94612

7       **Wachovia Dealer Services, Inc**

8       PO Box 25341  
9       Santa Ana, CA 92799

10       **Washington Mutual**

11       PO Box 660487  
12       Dallas, TX 75266

13       **Washington Mutual**

14       PO Box 74148  
15       Phoenix, AZ 85062

16       **Washington Mutual Bank**

17       7301 Baymeadows Way  
18       Jacksonville, FL 32256

19       **Wells Fargo**

20       PO Box 30086  
21       Los Angeles, CA 90030

22       **WELLS FARGO BANK N.A.**

23       BDD Bankruptcy Dept MAC S4101-08C  
24       100 W Washington St, Phoenix, AZ 85003

25       **Wells Fargo Bank, N.A.**

26       c/o Wells Fargo Card Services  
27       Recovery Department  
28       P.O. Box 9210  
29       Des Moines, IA 50306

30       **Wells Fargo Bank, National Association as Trustee**

31       EMC Payment Processing  
32       PO Box 660753  
33       Dallas, TX, 75266-0753